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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

8 United States of America,)

9 Plaintiff,)

10 v.)

11 Richard G. Renzi, James W. Sandlin, and)
12 Dwayne Lequire,)

13 Defendants,)
14

CR 08-212 TUC DCB (BPV)

O R D E R

15 The Court rejects the Magistrate Judge’s Report and Recommendation (R&R) to dismiss
16 the honest service counts under *Skilling v. United States*, 130 S.Ct. 2896 (2010), and to find the
17 motion to dismiss counts 6 and 7 as moot.

18 **STANDARD OF REVIEW: Report and Recommendation**

19 The duties of the district court in connection with a R&R are set forth in Rule 59 of
20 the Federal Rules of Criminal Procedure and 28 U.S.C.A. § 636(b)(1). The district court
21 may “accept, reject, or modify, in whole or in part, the findings or recommendations made
22 by the magistrate judge.” Fed. R. Crim. P. 59(b)(3); 28 U.S.C.A. § 636(b)(1). “The judge
23 may also receive further evidence or recommit the matter to the magistrate judge with
24 instructions.” 28 U.S.C.A. § 636(b); *see also* Fed. R. Crim. P. 59(b)(3).

25 Where the parties object to a R&R, “[a] judge of the [district] court shall make a *de*
26 *novo* determination of those portions of the [R&R] to which objection is made.” *Thomas v.*
27 *Arn*, 474 U.S. 140, 149-50 (1985) (quoting 28 U.S.C.A. § 636(b)(1)(C));. When no
28 objection is filed, the district court need not review the R&R *de novo*. *Wang v. Masaitis*, 416
F.3d 992, 1000 n. 13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22

1 (9th Cir. 2003) (en banc). Therefore, to the extent that no objection has been made,
2 arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185, 1187 (9th
3 Cir. 1980) (failure to object to Magistrate's report waives right to do so on appeal); *see also*,
4 Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United States Dist.*
5 *Court*, 501 F.2d 196, 206 (9th Cir. 1974) (when no timely objection is filed, the court need
6 only satisfy itself that there is no clear error on the face of the record in order to accept the
7 recommendation)).

8 The Court has considered the Objections filed by the parties, the Responses and the
9 Government's Reply, and the parties' briefs considered by the Magistrate Judge. The
10 matters contained in the R&R are fully briefed and ready for disposition by the Court.

11 MAGISTRATE JUDGE'S RECOMMENDATION

12 On October 27, 2011, Magistrate Judge Bernardo P. Velasco issued the R&R. (Doc.
13 913.) The Magistrate Judge found that, as a matter of law, *Skilling* requires dismissal of the
14 honest service wire fraud counts because the Government charged Renzi with undisclosed
15 self-dealing and not with taking a bribe or kickback. The Magistrate Judge's
16 recommendation hinged on allegations in the Second Superseding Indictment (SSI) that
17 Renzi concealed Sandlin's debt to Renzi from the land-exchange proponents. The
18 Magistrate Judge reasoned that this allegation brought the charges within an "amorphous
19 category of cases" rejected by the Supreme Court in *Skilling* as unconstitutionally vague:
20 undisclosed self-dealing. After *Skilling*, 18 U.S.C.A. § 1346 criminalizes only "fraudulent
21 schemes to deprive another of honest services through bribes or kickbacks supplied by a
22 third party who had not been deceived." *Skilling*, 130 S. Ct. At 2904. The Magistrate Judge
23 recommended dismissing the honest service counts 1 through 10. Consequently, he
24 recommended the Court find the Motion to Dismiss Counts 6 and 7 to be moot.

25 The Magistrate Judge considered *Skilling*, which was issued by the Supreme Court
26 subsequent to the parties briefing the Motion to Dismiss the Honest Service Charges. By
27 their objections to the R&R, the parties have presented their positions as to whether *Skilling*
28 requires the Court to grant the Motion to Dismiss the Honest Service Charges.

1 The Government objects to the R&R as a misreading of *Skilling* and as being inconsistent
2 with the Ninth Circuit's ruling denying Defendant Renzi's Speech or Debate Clause
3 arguments on appeal. The Government argues the R&R conflicts with earlier rulings by this
4 Court explicitly finding that the SSI sufficiently charged the bribery prong of honest
5 services fraud. *See* (Doc. 324: Order Re: Motion to Strike Surplusage at 4-5.)

6 In addition to urging the Court to adopt the R&R and dismiss the honest service
7 charges, Defendant Renzi argues that *Skilling* also requires the Court to dismiss the
8 Racketeering Acts 1A and 2C.

9 The racketeering count, predicate act 2, Scheme to Deprive the United States of
10 Honest Services, and to Extort Constituents, alleges that between January 2005 and
11 February 2006, Renzi devised, attempted to devise, and intended to devise a scheme and
12 artifice to defraud the United States of its intangible right to honest services. Subpredicate
13 act 2C realleges the substantive honest services fraud offenses and alleges use of interstate
14 wires on September 27, 2005 (count 8), to transmit payout instructions for \$533,000 to
15 Patriot Insurance Agency from Texas to Arizona. Because subpredicate 2C realleges the
16 honest services wire fraud count 8, it rises or falls on *Skilling*.

17 The racketeering count, predicate act 1, Use of Insurance Premiums Held in Trust to
18 Fund First Congressional Campaign, alleges that between December 2001 and June 2003,
19 Defendant Renzi devised, attempted to devise, and intended to devise a scheme and artifice
20 to defraud by misappropriating insurance premiums held in trust by Renzi and Company and
21 diverted those funds to his own benefit and that of his congressional campaign. Subpredicate
22 act 1A charges that on January 24, 2002, Renzi used the interstate wires for the purpose of
23 executing this scheme by filing an FEC Form 3 by wire, containing the false statement that
24 the money Renzi embezzled from insureds was instead a loan of his personal money to the
25 campaign.

26 Defendant Renzi's assertion that subpredicate 1A is an honest service count is based
27 on the subpredicate count's reliance on 18 U.S.C.A. § 1346, which broadens the reach of the
28 wire fraud statute to include a scheme or artifice to deprive another of the intangible right of

1 honest services. However, subpredicate 1A also alleges a violation of 18 U.S.C.A. § 1343
2 for filing a form with the Federal Election Commission falsely reporting funds received for
3 his first congressional campaign were loans rather than embezzled insurance premiums.
4 Subpredicate 1A can stand alone as a “money and property” wire fraud charge even if it
5 fails under *Skilling*.

6 At the time Renzi filed his objection, the appeal was still pending and he objected to
7 this Court’s exercising jurisdiction over the case pending disposition of his appeal.

8 Subsequently, the Ninth Circuit Court of Appeals has resolved the appeal by
9 affirming the Court’s rulings regarding the Speech or Debate Clause, but reversed the
10 Court’s dismissal of the RICO Act, predicate count 2 (honest services allegations), and
11 remanded the RICO charges for trial. The Mandate issued on January 19, 2012, returning
12 jurisdiction to this Court, made Renzi’s jurisdictional challenge moot. Because the Court
13 rejects the R&R regarding *Skilling*, the Court rejects Renzi’s assertion to dismiss the
14 Racketeering Act, subpredicate Acts 1A and 2C under *Skilling*.

15 Defendant Sandlin objected only to the conclusion in the R&R that the Motion to
16 Dismiss the wire fraud charges based on loan proceeds is moot. Because the Court does not
17 adopt the R&R in respect to *Skilling*, the Motion to Dismiss Wire Fraud Charges Based on
18 Loan Proceeds (Counts 6 and 7) is not moot.

19 OBJECTIONS

20 A. *Skilling v. United States*, 130 S. Ct. 2896 (2010)

21 The Government alleges ten counts against Renzi for using wires to commit fraud
22 that deprived the United States of its “intangible right” to his “honest services,” in violation
23 of 18 U.S.C.A. §§ 1343 and 1346. (Doc. 466, ¶¶ 15, 27).

24 Section 1343 makes it illegal to devise or intend to devise any scheme or artifice to
25 defraud, or for obtaining money or property by means of false or fraudulent pretenses,
26 representations, or promises, and transmit or cause to be transmitted by means of wire,
27 radio, or television communication in interstate or foreign commerce, any writings, signs,
28 signals, pictures, or sounds for the purpose of executing such scheme or artifice.

1 Section 1346 defines the fraud prohibited by § 1343 to include conduct which
2 deprives another of the “intangible right of honest services.”

3 Congress enacted section 1346 in response to judicial decisions limiting the honest-
4 services theory of fraud to fraud against tangible property interests, not the intangible right
5 of the citizenry to good government. (R&R at 4-5) (citing *Skilling*’s discussion of case law
6 since 1941 and *McNally v. United States*, 107 S. Ct. 2875, 2879 (1987)). In *Skilling*, the
7 Supreme Court addressed the scope and constitutionality of the honest-services statute and
8 made an effort to add clarity to the honest-services wire fraud doctrine.

9 *Skilling* involved a former corporate executive accused of participating in a scheme to
10 deceive the public and shareholders about his company’s performance in order to prop up its
11 stock value. *Skilling*, 130 S.Ct. at 2907. The government in *Skilling* charged, among other
12 things, that an object of the scheme was to deny the company and its shareholders their
13 rights to the executive’s honest services, in derogation of 18 U.S.C.A. § 1346. *Id.* at 2908.

14 To preserve the statute without transgressing constitutional limitations of due process
15 for being unconstitutionally vague, the Supreme Court limited section 1346 to criminalizing
16 only ““fraudulent schemes to deprive another of honest services through bribes or kickbacks
17 supplied by a third party *who had not been deceived.*”” (R&R at 6 (quoting *Skilling* at
18 2928–29,2931, 1232)). The Supreme Court expressly rejected the government’s argument
19 that § 1346 should also encompass “undisclosed self-dealing by a public official or private
20 employee— *i.e.*, the taking of official action by the employee [or official] that furthers his
21 own undisclosed financial interests while purporting to act in the interests of those to whom
22 he owes a fiduciary duty.” *Skilling*, 130 S. Ct. at 2932. Under *Skilling*, allegations of
23 undisclosed self-dealing do not support a violation of Section 1346.

24 The Supreme Court instructed that the prohibition on bribes and kickbacks draws
25 content not only from pre- *McNally* case law, but also from federal statutes
26 proscribing—and defining—similar crimes. *See, e.g.*, 18 U.S.C.A. §§ 201(b), 666(a)(2); 41
27 U.S.C.A. § 52(2), *now* 41 U.S.C.A. § 8701(s). (R&R at 6) (citing *Skilling*, 130 S. Ct. at
28 2933). It is undisputed that the SSI against Renzi, having issued before *Skilling*, charged

1 him with undisclosed self-dealing. Accordingly, the honest service charges against Renzi
2 “encompass conduct more wide-ranging than the paradigmatic cases of bribes and
3 kickbacks.” *Skilling*, 130 S.Ct. at 2932. The Magistrate Judge, therefore, got it right when
4 he held: “The indictment alleges undisclosed self-dealing– an area the Supreme Court has
5 instructed falls outside the reach of § 1346.” (R&R at 9.) The Magistrate Judge erred,
6 however, in ending the inquiry without asking whether, in addition to undisclosed self-
7 dealing, the SSI charge a paradigmatic case of bribery or kickbacks.

8 B. *Skilling*: Paradigmatic Cases of Bribery and Kickbacks

9 As noted by the Magistrate Judge: “The Ninth Circuit recently narrowly construed
10 the term ‘kickback’ in the context of an honest-services charge as involving a ‘return of a
11 portion of a monetary sum received, [especially] as a result of coercion or a secret
12 agreement.’” (R&R at 6) (quoting *United States v. Pelisamen*, 641 F.3d 399, 405 (9th
13 Cir.2011) (*emphasis in original*) (finding the “paradigmatic kickback” as defined by 41
14 U.S.C.A. § 52(2), now 41 U.S.C.A. § 8701(2) is made for the purpose of improperly
15 obtaining or rewarding favorable treatment in some area (*e.g.*, government contracts).

16 “The Ninth Circuit also recently addressed a challenge to an honest-services
17 conviction in the context of bribery, and found the evidence demonstrated the requisite *quid*
18 *pro quo* was satisfied by ‘a course of conduct of favors and gifts flowing to a public official
19 in exchange for a pattern of official actions favorable to the donor.’”(R&R at 6-7) (quoting
20 *United States v. Wilkes*, --- F.3d ---, 2011 WL 495370 *16 (9th Cir. 2011)).

21 The Magistrate Judge concluded that the conduct charged in the SSI was neither a
22 paradigmatic case of bribery nor a kickback because Renzi did not obtain the benefit from
23 the scheme from a third party, *who had not been deceived*. In fact, the SSI expressly alleges
24 that “Sandlin and Renzi *concealed* Sandlin’s debt to Renzi” from both land exchange
25 proponents. (R&R at 7.) The Magistrate Judge concluded these allegations in the SSI
26 defeat the honest services charges by making this case “fall squarely into that ‘amorphous
27 category of cases’ rejected . . . as unconstitutionally vague: ‘undisclosed self-dealing,’ i.e.,
28 actions that further a party’s own undisclosed financial interests ‘while purporting to act in

1 the interests of those to whom [one] owes a fiduciary duty.’” (R&R at 8) (quoting *Skilling*,
2 130 S. Ct. at 2932)).

3 The Government alleged a claim of *quid pro quo* bribery when it charged that Renzi
4 told land exchange proponents, “No Sandlin property, no bill.” He also promised to give the
5 land exchange legislation a “free pass” through the House of Representatives Natural
6 Resource Committee. SSI 25(i)-(k), *see also* (Doc. 324: Order Re: Motion to Strike
7 Surplusage at 4-5 (finding that the Superseding Indictment ¶ 28(i-k), now the SSI ¶ 25(i-k)
8 tracks the two core categories of official misconduct for honest services mail and wire fraud:
9 1) taking a bribe or otherwise being paid for a decision while purporting to be exercising
10 independent discretion and 2) nondisclosure of material information). Accordingly, the
11 Government has charged Renzi with directly soliciting and taking a bribe in exchange for
12 his promise to land exchange proponents that they would receive favorable legislative
13 treatment if they purchased the Sandlin property. Under *Skilling*, however, the benefit from
14 the fraudulent scheme must flow to Renzi from a third party who has not been deceived.
15 Otherwise, the case is nothing more than undisclosed self dealing.

16 It is helpful to note what a paradigmatic self-dealing case looks like. *Skilling* is a
17 good example. The government alleged that Skilling defrauded Enron shareholders by
18 misrepresenting the company’s fiscal health, which artificially inflated its stock price,
19 thereby enabling him to profit from this fraudulent scheme . . . through the receipt of salary
20 and bonuses, . . . and through the sale of approximately \$200 million in Enron stock. The
21 government did not charge Skilling with soliciting or accepting side payments from any
22 third party in exchange for making these misrepresentations. The government’s charges
23 against Skilling were limited to conduct that furthered his own undisclosed financial
24 interests while he purported to act in the interests of those to whom he owed a fiduciary
25 duty. There was nothing more.

26 Here, the Government has alleged that Renzi acted to further his own undisclosed
27 financial interests in the sale of the Sandlin property, while purporting to act in the interests
28 of those to whom he owed his honest services. (R&R at 2-3) (citing SSI ¶¶ 28-30). But, the

1 Government charges more: Renzi solicited a bribe from the land exchange proponents when
2 he compelled them to purchase the Sandlin property in exchange for his promise to promote
3 favorable land exchange legislation. (R&R at 2-3) (citing SSI at ¶¶ 25j-o). The Court does
4 not agree with the Magistrate Judge’s conclusion that because the SSI charges that Renzi
5 concealed his interest in the Sandlin property from the land exchange proponents, the honest
6 service claim must fail. Unlike a paradigmatic self-dealing case, such as *Skilling*, where
7 there is nothing more than an undisclosed financial interest, here, the SSI alleges that Renzi
8 had a secret agreement with Sandlin for Sandlin to pay Renzi \$700,000 if Renzi secured the
9 sale of the Sandlin property by the land exchange proponents. Without this secret
10 “kickback” agreement between Sandlin and Renzi, the sale of the Sandlin property would
11 not necessarily have resulted in Renzi being repaid the money owed him by Sandlin. Renzi
12 did not own an interest in the Sandlin property nor was Sandlin’s debt secured by the
13 property.

14 The Court believes its application of *Skilling* is consistent with the Ninth Circuit’s
15 discussion of bribery in this case and its finding that the extortion charges against Renzi are
16 a distinction without a difference. *United States v. Renzi*, 651 F.3d 1012, 1024 (9th Cir.
17 2011). Even though the charges against Defendant Renzi are for extortion, the court held to
18 the Speech or Debate Clause principles outlined by the Supreme Court in *United States v.*
19 *Brewster*, 408 U.S. 501 (1972), where taking a bribe was found to “obviously” be not part of
20 the legislative process or function. The appellate court refused to allow Defendant Renzi to
21 rely “on the fact that, as charged, his deceit was more refined, more sophisticated, than
22 Brewster’s. Rather than selling his office for cash, he was wise enough to at least attempt to
23 conceal his crime by using more indirect means of payment.” *United States v. Renzi*, 651
24 F.3d 1012, 1024 (9th Cir. 2011). The Ninth Circuit confirmed that the factual allegations in
25 the SSI supporting extortion are indistinguishable from a bribery charge. These same
26 factual allegations support the honest service counts in the SSI. Compare SSI Count 1, ¶¶
27 15-25 (Conspiracy to Commit Extortion and Wire Fraud), Counts 2-10, ¶¶ 1-14, 16-25, 26-
28 30 (Honest Service Wire Fraud) and Counts 26-27, ¶¶ 1-14, 16-25, 47-50 (Extortion).

1 The Court does not believe its application of *Skilling* here stretches the honest service
2 statute out of shape beyond the prohibition on bribes and kickbacks drawn by the Supreme
3 Court from pre-McNally cases and federal statutes proscribing similar crimes. *Skilling*, 130
4 S. Ct. at 2933-34. The Supreme Court itself opened the door for the Court to consider a
5 violation of honest service wire fraud based on 18 U.S.C.A.A. § 1951(a): Extortion. In
6 *Skilling*, the Court relied on *United States v. Ganim*, 510 F.3d 134 (2nd Cir. 2007), where the
7 court reviewed honest-services convictions involving bribery in light of elements of bribery
8 under the substantive law of extortion, and *United States v. Kemp*, 500 F.3d 257, 280-81 (3rd
9 Cir. 2007), where the indictment charged an honest service wire fraud conspiracy with
10 substantive honest services wire fraud counts for false statements, money laundering, false
11 tax returns, perjury, and extortion and attempted extortion. The third case relied on by the
12 *Skilling* Court, *United States v. Whitefield*, 590 F.3d 325 (5th Cir. 2009) discussed the
13 distinction between the illegal gratuity statute, which does not contain the limiting principle
14 of *quid pro quo*, with both the extortion and bribery statutes, which both do require “an
15 intent to perform an act in exchange for a benefit.” *Id.* at 352, *see also, Evans v. United*
16 *States*, 504 U.S. 255, 260 (1992) (describing extortion as being nearly identical to bribery
17 from the perspective of the public official), *United States v. Kincaid-Chauncey*, 556 F.3d
18 923, 937 (9th Cir. 2009) (finding conviction for Hobbs Act extortion (extortion under color
19 of official right) requires the government to prove *quid pro quo*).

20 The Court finds the honest service violations alleged in the SSI go beyond mere
21 undisclosed self-dealing. The Government’s extortion case against Renzi charges Renzi
22 with soliciting a bribe from Company A and Investment Group B, which was paid to
23 Sandlin, and alleges a secret kickback-agreement with Sandlin, who was not being deceived,
24 to return a portion of the sale proceeds to Renzi. The Court finds the Government has
25 alleged facts supporting a paradigmatic bribery and kickback case under *Skilling* and denies
26 the Motion to Dismiss the Honest Service Counts.

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1 B. Dismissal of Wire Fraud Charges Based on Loan Proceeds (Counts 6&7)

2 Counts 6 and 7 involve wire transfers to Sandlin in Arizona from a husband and wife
3 in Texas of their retirement funds held in New York to Arizona made as a personal loan to
4 Sandlin, which was undisputably a legitimate loan secured by a portion of the Sandlin
5 property retained by Sandlin and not sold to Investment Group B. Defendant Renzi¹ argues
6 that counts 6 and 7 must be dismissed because the wire transmissions were not in
7 furtherance of the alleged scheme to defraud. (Doc. 108: Motion to Dismiss Wire Fraud
8 Charges Based on Loan Proceeds (Counts 6 & 7) (Motion to Dismiss Counts 6 and 7)).

9 Counts 2 through 10 allege honest service wire fraud violations of 18 U.S.C.A.. §§
10 1343 and 1346 and § 2. The Government charges that between January 2005 and February
11 2006, Defendants Renzi and Sandlin aided and abetted one another, devised, attempted to
12 devise, and intended to devise a scheme and artifice to defraud and deprive the United States
13 of its intangible right to the honest services of Renzi to be performed free from deceit, self-
14 dealing, conflict of interest, and concealment. The object of the scheme was to enrich both
15 Renzi and Sandlin by using the promise of Renzi's exercise of his official authority in their
16 favor to compel Company A and Investment Group B to purchase the Sandlin property. It
17 was also the object of the scheme to conceal Renzi's financial relationship with Sandlin
18 from Company A, Investment Group B, the United States House of Representatives, and the
19 public. The Government charged that for the purpose of executing the scheme and artifice
20 to defraud, Renzi and Sandlin transmitted and caused to be transmitted certain writings,
21 signs, signals and sounds by means of interstate wire as set forth in counts 2 through 10.
(SSI ¶ 26-29.)

22 Counts 6 and 7 involve wire transfers from New York to Arizona of \$445,000 and
23 \$551,000, respectively, for a legitimate \$996,000 loan secured by Sandlin from individuals
24 having no relationship whatsoever to either Sandlin or Renzi, or this case, except that the
25 \$996,000 loan was secured by the remainder of the Sandlin property which had not been
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27 ¹Defendant Sandlin objects to the R&R finding as moot the Motion to Dismiss the wire fraud
28 charges based on loan proceeds. (Doc. 937.)

1 sold to Investment Group B. Defendant Renzi argues that wire counts 6 and 7 must be
2 dismissed because “the loan itself was not obtained by fraud, and because the wire transfers
3 in question are not alleged to have contributed to the success of the purported honest service
4 scheme.” (Motion to Dismiss Counts 6 & 7 at 3.)

5 Defendant correctly notes that where a wire transfer does not itself involve a
6 misrepresentation or other falsehood, the Government must establish that the success or
7 failure of the scheme to defraud is in some sense dependent upon the wire transmission. In
8 other words, the Government must establish that the wire transmissions charged in counts 6
9 and 7 in some way advanced the scheme to defraud and deprive the United States of its
10 intangible right to the honest services of Defendant Renzi. It is enough if the wire transfers
11 served in some way to conceal or prevent detection of the scheme. (Motion to Dismiss
12 (Doc. 108) at 4-5) (citing *United States v. Maze*, 414 U.S. 395, 399 (1974); *United States v.*
13 *Halbert*, 640 F.2d 1000, 1009 (9th Cir. 1981); *Schmuck v. United States*, 489 U.S. 705, 715
14 (1989), *United States v. Henson*, 848 F.2d 1374, 1378 (6th Cir. 1988), *United States v.*
15 *Altman*, 48 F.3d 96, 102 (2nd Cir. 1995), *United States v. Downs*, 870 F.2d 613, 615 (11th
16 Cir. 1989), *United States v. Wellman*, 830 F.2d 1453, 1461 n. 11 (7th Cir. 1987)).

17 However, the scheme to defraud need not contemplate the use of the mails or wires as
18 an essential element. *Pereira v. United States*, 347 U.S. 1, 8 (1954). Even use of the wires
19 post-fraud can contribute to the success of a fraudulent scheme by lulling unsuspecting
20 victims into complacency to prolong or perpetuate a scheme. *Schmuck v. United States*, 489
21 U.S. 705, 717 (1989). It is enough if the wires were used as a part of the scheme or
22 somehow contributed to the success of the scheme. *Id.*, *United States v. Halbert*, 640 F.2d
23 1000, 1009 (9th Cir. 1981).

24 The Government submits that the evidence will show the transfer of the New York
25 money into the escrow account contemporaneous with the Sandlin-Renzi payments served
26 as a smoke screen.

27 On July 6, 2005, Sandlin extended the Sandlin property escrow. (SSI ¶ 25(s)). On
28 September 26, 2005, the loan proceeds were wire transferred into the loan-escrow account

1 with Pioneer Title Company in Sierra Vista. (Counts 6 and 7.) On September 27, 2005,
2 Sandlin sent escrow instructions to Pioneer Title to payout \$533,000 to Patriot Insurance.
3 (Count 8.) On September 30, 2005, Renzi faxed a letter to Pioneer Title Company in Sierra
4 Vista, allegedly dated August 30, addressed to Sandlin which falsely stated a note held by
5 Renzi “for the Kingman property” was being called in as due and payable in full to Patriot
6 Insurance. (SSI ¶ 25(u)). On September 30, Sandlin paid Patriot Insurance \$533,000
7 through a transaction conducted at Pioneer Title in Sierra Vista, and the same day,
8 Defendant Renzi transferred \$533,000 from Patriot Insurance into an account opened the
9 same day for Rick Renzi Rain Whisper. (SSI ¶¶ 25(v-w)). On October 7, 2005, Investment
10 Group B transferred \$1.6 million to Sandlin along with a \$2 million note payable to Sandlin,
11 to complete the purchase of the Sandlin property. (SSI ¶ 25(x)).

12 The Government argues that Sandlin needed a mechanism to get in excess of
13 \$500,000 to Renzi without public scrutiny. The Government argues that the temporal and
14 substantive connection between the New York money and the Sandlin property sale reflects
15 the \$966,000 loan was the mechanism by which Defendants created a smokescreen to
16 conceal their fraudulent affairs. At the end of the Government’s case, pursuant to Fed. R.
17 Cr. P. 29, the Court may consider whether there is sufficient evidence from which a rational
18 jury could conclude that the success of the fraudulent scheme depended, either directly or
19 indirectly, on use of the wires as alleged in each count, including counts 6 and 7. For now,
20 the Court’s legal analysis is limited to the facts alleged in the SSI, which the Court finds
21 sufficiently state honest service wire fraud claims in counts 6 and 7. It remains to be seen at
22 trial whether the Government can support these counts with sufficient evidence.

23 CONCLUSION

24 The Court has reviewed, *de novo*, the issues raised in the Objections filed by the
25 parties, the Responses and the Government’s Reply, and the parties’ briefs considered by the
26 Magistrate Judge. The Court does not agree with the findings of fact and conclusions of law
27 made by the Magistrate Judge in the R&R for determining the pending Motion to Dismiss
28 Honest Service Charges (Counts 1-10) and, therefore, the Motion to Dismiss Wire Fraud

1 Charges Based on Loan Proceeds (Counts 6 & 7) is not moot. The Court does not adopt the
2 R&R. The Court denies both motions for the reasons stated above.

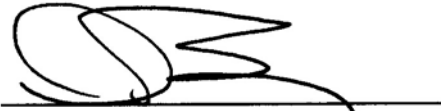
3 **Accordingly,**

4 **IT IS ORDERED** that after a full and independent review of the record, the Court
5 does not adopt the Magistrate Judge's Report and Recommendation (Doc. 913) .

6 **IT IS FURTHER ORDERED** the Motion to Dismiss Honest Service Charges
7 (Counts 1-10) (Doc. 109) is DENIED.

8 **IT IS FURTHER ORDERED** that the Motion to Dismiss Wire Fraud Charges
9 Based on Loan Proceeds (Counts 6 & 7) (Doc. 108) is DENIED.

10 DATED this 20th day of March, 2012.

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13 David C. Bury
14 United States District Judge
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